

A BILL FOR AN ACT

To amend chapter 9 of title 33 of the Code of the Federated States of Micronesia, regarding secured transactions, by repealing subchapters I and II thereof, and by adding new subchapters I, II, III, IV, and V, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Subchapters I, and II of chapter 9 of title 33 of the Code of
2 the Federated States of Micronesia are hereby repealed in their entirety.

3 Section 2. Chapter 9 of title 33 of the Code of the Federated States of
4 Micronesia is hereby amended by adding a new subchapter I, entitled "Short
5 Title, Applicability and Definitions," by adding a new subchapter II, entitled
6 "Validity of Security Agreement and Rights of Parties thereto, by adding a new
7 chapter III entitled "Rights of Third Parties; Perfected and Unperfected Security
8 Interests; Rules of Priority," by adding a new subchapter IV entitle "Filing," and
9 by adding a new subchapter V, entitled "Default." All sections herein enacted
10 to law are intended to conform with the "Uniform Commercial Code" (UCC)
11 1990 Edition.

12 Section 3. Chapter 9 of title 33 of the Code of the Federated States of
13 Micronesia is hereby amended by adding a new section 9-101 of subchapter I
14 to read as follows:

15 "Section 9-101. Short title. This chapter shall be known and may
16 be cited as the 'Secured Transactions Act of 1997', or The
17 Uniform Commercial Code, (UCC) as adopted."

18 Section 4. Chapter 9 of title 33 of the Code of the Federated States of
19 Micronesia is hereby amended by adding a new section 9-102 of subchapter I
20 to read as follows:

21 "Section 9-102. Policy and subject matter of chapter.

22 (1) Except as otherwise provided in section 9-104 on
23 excluded transactions, this chapter applies:

24 (a) to any transaction (regardless of its form)
25 which is intended to create a security interest in personal

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property or fixtures including goods, documents, instruments,

general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by

contract including pledge, assignment, chattel mortgage, chattel

trust, trust deed, factoring, equipment trust, conditional sale,

trust receipt, other lien or title retention contract and lease or

consignment intended as security. This chapter does not apply to

statutory liens except as provided in section 9-310.

(3) The application of this chapter to a security interest in

a secured obligation is not affected by the fact that the obligation

is itself secured by a transaction or interest to which this chapter

does not apply."

Section 5. Chapter 9 of title 33 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 9-104 of subchapter I
to read as follows:

"Section 9-104. Transaction excluded from chapter. This chapter
does not apply:

(1) to a security interest subject to any statute of the

Federated States of Micronesia, to the extent that such statute

governs the rights of parties to and third parties affected by

transactions in particular types of property; or

(2) to a landlord's lien; or

(3) to a lien given by statute or other rule of law for

services or materials except as provided in section 930 on priority

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1 of such liens; or
2 (4) to a transfer of a claim for wages, salary or other
3 compensation of an employee; or
4 (5) to a transfer by a government or governmental
5 subdivision or agency; or
6 (6) to a sale of accounts or chattel paper as part of a
7 sale of the business out of which they arose, or an assignment of
8 accounts or chattel paper which is for the purpose of collection
9 only, or a transfer of a right to payment under a contract to an
10 assignee who is also to do the performance under the contract or
11 a transfer of a single account to an assignee in whole or partial
12 satisfaction of a preexisting indebtedness; or
13 (7) to a transfer of an interest in or claim in or under any
14 policy of insurance, except as provided with respect to proceeds
15 (section 9-306) and priorities in proceeds (section 9-312); or
16 (8) to a right represented by a judgment (other than a
17 judgment taken on right to payment which was collateral); or
18 (9) to any right of setoff; or
19 (10) except to the extent that provision is made for
20 fixture in section 9-313, to the creation or transfer of an interest
21 in or lien on real estate, including a lease or rents thereunder; or
22 (11) to a transfer in whole or part of any claim arising out
23 of tort; or
24 (12) to a transfer of an interest in any deposit account
25 (subsection (1) of section 9-105), except as provided with

1 respect to proceeds (section 9-306) and priorities in proceeds
2 (section 9-312)."

3 Section 6. Chapter 9 of title 33 of the Code of the Federated States of
4 Micronesia is hereby amended by adding a new section 9-105 of subchapter I
5 to read as follows:

6 "Section 9-105. Definitions.

7 (1) In this chapter unless the context otherwise requires:

8 (a) 'Account' means any right to payment for
9 goods sold or leased or for services rendered which is not
10 evidenced by an instrument or chattel paper, whether or not it
11 has been earned by performance;

12 (b) 'Account debtor' means the person who is
13 obligated on an account, chattel paper or general intangible;

14 (c) 'Chattel paper' means a writing or writings
15 which evidence both a monetary obligation a security interest in or
16 a lease of specific goods, but a chattel or other contract involving
17 the use or hire of a vessel is not chattel paper. When a
18 transaction is evidence both by such a security agreement or a
19 lease and by an instrument or a series of instruments, the group
20 of writing taken together constitutes chattel paper;

21 (d) 'Collateral' means the property subject to a
22 security interest, and includes accounts and chattel paper which
23 have been sold;

24 (e) 'Debtor' means the person who owes payment
25 or other performance of the obligation secured, whether or not

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1 the person owns or has rights in the collateral, and includes the
2 seller of accounts or chattel paper. Where the debtor and the
3 owner of the collateral are not the same person, the he term
4 'debtor' means the owner of the collateral, the obligor in any
5 provision dealing with the obligation, and may include both were
6 the context so requires;

7 (f) 'Deposit account' means a demand, time,
8 savings, passbook or like account maintained with a bank, savings
9 and loan association, credit union or like organization, other than
10 an account evidenced by a certificate of deposit;

11 (g) 'Document' means document of title and
12 includes bill or lading, dock warrant, dock receipt, warehouse
13 receipt or order for the delivery of goods, and also any other
14 document which in the regular course of business or financing is
15 treated as adequately evidencing that the person in possession of
16 it is entitled to receive, hold and dispose of the document and the
17 goods it covers; to be a document of title a document must
18 purport to be issued by or addressed to a bailee and purport to
19 cover goods in the bailee's possession which are either identified
20 or are fungible portions of an identified mass;

21 (h) 'Encumbrance' includes real estate mortgages
22 and other liens on real estate and all other rights in real estate
23 that are not ownership interest;

24 (i) 'General intangibles' means any personal
25 property (including things in action) other than goods, account,

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chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts:

(j) 'Goods includes all things which are movable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, document, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. 'Good' also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops:

(k) 'Instrument' means a negotiable instrument, or a certificate security or any other writing which evidence a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course o business transferred by delivery with any necessary endorsement or assignment:

(l) 'Mortgage' means a consensual interest created by real estate mortgage, a trust deed on real estate, or the like,

(m) A Security interest is a 'purchase money security interest' to be extent that it is:

(i) taken or retained by the seller of the collateral to secure all or part of its price; or

(ii) taken by a person who by making

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advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used;

(n) An advance is made 'pursuant to commitment' if the secured party has bound himself or herself to make it, whether or not a subsequent event of default or other event not within the party's control has relieved or may relieve such party from his or her obligation;

(o) 'Security agreement' means an agreement which creates or provides for a security interest;

(p) 'Secured party' means a lender, seller or other person in whose favor there is security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(q) 'Transmitting utility' means any person primarily engaged in the electric or electronics communications transmission business, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service."

Section 7. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-108 of subchapter I to read as follows:

"Section 9-108. When after-acquired collateral is not security for

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antecedent debt. Where a secured party makes an advance,
incurs an obligation, releases a perfected security interest, or
otherwise gives new value which is to be secured in whole or in
part by after-acquired property such party' security interest in
the after-acquired collateral shall be deemed to be taken for new
value and not as security for an antecedent debt if the debtor
acquires rights in such collateral shall be deemed to be taken for
new value and not as security for an antecedent debt if the
debtor acquires rights in such collateral either in the ordinary
course of business or under a contract of purchase made
pursuant to the security agreement within a reasonable time after
new value is given."

Section 8. Chapter 9 of title 33 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 9-109 of subchapter I
to read as follows:

"Section 9-109. Classification of goods: 'consumer goods';
'equipment'; 'farm products'; 'inventory'. Goods are:

(1) 'consumer goods' if they are used or bought for use
primarily for personal, family or household purposes;

(2) 'equipment' if they are used or bought or use primarily
in business (including farming or a profession or by a debtor who
is non-profit organization or a governmental subdivision or
agency or if the goods are not included in the definitions of
inventory, farm products or consumer goods;

(3) 'farm products' if they are crops or livestock or

1 supplies used or produced in farming operations or if they are
2 products or crops or livestock in their unmanufactured states
3 (such as ginned cotton, wool-clip, maple syrup, milk and eggs).
4 and if they are in the possession of a debtor engaged in raising,
5 fattening, grazing or other farming operations. If goods are farm
6 products they are neither equipment nor inventory:

7 (4) 'inventory' if they are held by a person who holds
8 them for sale or lease or to be furnished under contracts of
9 service or if they have been so furnished, or if they are raw
10 materials, work in process or materials used or consumed in
11 a business. Inventory of a person is not to be classified as
12 that person's equipment."

13 Section 9. Chapter 9 of title 33 of the Code of the Federated
14 States of Micronesia is hereby amended by adding a new section 9-110 of
15 subchapter I to read as follows:

16 "Section 9-110 Sufficiency of description. For the purposes
17 of this chapter any description of personal property or real
18 estate is sufficient whether or not it is specific if it reasonably
19 identifies what is described."

20 Section 10. Chapter 9 of title 33 of the Code of the Federated
21 States of Micronesia is hereby amended by adding a new section 9-112 of
22 subchapter I to read as follows:

23 Section 9-112. Where collateral is not owned by debtor.
24 Unless otherwise agreed, when a secured party knows that
25 collateral is owned by a person who is not the debtor, the

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owner of the collateral is entitled to receive from the secured party any surplus under section 9-502(2) or under section 9-504(1), and is not liable for the debt or for any deficiency after resale, and has the same rights as the debtor:

(1) to receive statements under section 9-208;

(2) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 9-505;

(3) to redeem the collateral under section 9-506;

(4) to obtain injunctive or other relief under section 9-507(1); and

(5) to recover losses caused to the secured party under section 9-208(2)."

Section 11. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-201 of subchapter II to read as follows:

"Section 201. General validity of security agreement. Except as otherwise provided by this act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto."

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Section 12. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-202 of subchapter II to read as follows:

"Section 9-202. Title to collateral immaterial. Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor."

Section 13. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-203 of subchapter II to read as follows:

"Section 9-203. Attachment and enforceability of security interest; Proceeds; Formal requisites.

(1) A security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events

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1 specified in subsection (1) have taken place unless explicit
2 agreement postpones the time of attaching.

3 (3) Unless otherwise agreed a security agreement
4 gives the secured party the rights to proceeds provided by
5 section 926."

6 Section 14. Chapter 9 of title 33 of the Code of the Federated
7 States of Micronesia is hereby amended by adding a new section 9-204 of
8 subchapter II to read as follows:

9 "Section 9-204. After-acquired property; Future advances.

10 (1) Except as provided in subsection (2), a security
11 agreement may provide that any or all obligations covered by
12 the security agreement are to be secured by after-acquired
13 collateral.

14 (2) No security interest attaches under an after-
15 acquired property clause to consumer goods other than
16 accessions (section 9-314) when given as additional security
17 unless the debtor acquires rights in them within 10 days after
18 the secured party gives value.

19 (3) Obligations covered by a security agreement may
20 include future advances or other value whether or not the
21 advances or value are given pursuant to commitment
22 (subsection (1) of section 9-105)."

23 Section 15. Chapter 9 of title 33 of the Code of the Federated
24 States of Micronesia is hereby amended by adding a new section 9-205 of
25 subchapter II to read as follows:

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1 "Section 9-205. use or disposition of collateral without
2 accounting permissible. A security interest is not invalid or
3 fraudulent against creditors by reason of liberty in the debtor
4 to use, commingle or dispose of all or part of the collateral
5 (including returned or repossessed goods) or to collect or
6 compromise accounts or chattel paper, or to accept the
7 return of goods or make repossessions, or to use, commingle
8 or dispose of proceeds, or by reason of the failure of the
9 secured party to require the debtor to account for proceeds
10 or replace collateral. This section does not relax the
11 requirements of possession where perfection of a security
12 interest depends upon possession of the collateral by the
13 secured party or by a bailee"

14 Section 16. Chapter 9 of title 33 of the Code of the Federated
15 States of Micronesia is hereby amended by adding a new section 9-206 of
16 subchapter II to read as follows:

17 "Section 9-206. Agreement not to assert defenses against
18 assignee. Subject to any statute or decision which
19 establishes a different rule for buyers or lessees of consumer
20 goods, an agreement by a buyer or lessee that he or she will
21 not assert against an assignee any claim or defense which he
22 or she may have against the seller or lessor is enforceable by
23 an assignee who takes assignment for value, in good faith
24 and without notice of a claim or defense, except as to
25 defenses of a type which may be asserted against a holder in

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due course of a negotiable instrument under common law
principles or applicable law. A buyer who as part of one
transaction signs both a negotiable instrument and security
agreement makes such an agreement."

Section 17. Chapter 9 of title 33 of the Code of the Federated
States of Micronesia is hereby amended by adding a new section 9-207 of
subchapter II to read as follows:

"Section 9-207. Rights and duties when collateral is in
secured party's possession.

(1) A secured party must use reasonable care in the
custody and preservation of collateral in that party's
possession. In the case of an instrument or chattel paper
reasonable care includes taking necessary steps to preserve
rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the
secured party's possession:

(a) reasonable expenses (including the cost of
any insurance and payment of taxes or other charges)
incurred in the custody, preservation, use or operation of the
collateral are chargeable to the debtor and are secured by
the collateral;

(b) the risk of accidental loss or damage is on
the debtor to the extent of any deficiency in any effective
insurance coverage; incorporated into an improvement on
land.

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(3) This chapter does not prevent creation of an
encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has
priority over the conflicting interest of an encumbrancer or
owner of the real estate where:

(a) the security interest is a purchase money
security interest, the interest of the encumbrancer or owner
arises before the goods become fixtures, the security interest
is perfected by a fixture filing before the goods become
fixtures or within 10 days thereafter, and the debtor has an
interest of record in the real estate or is in possession of the
real estate; or

(b) the security interest is perfected by a fixture
filing before the interest of the encumbrancer or owner is of
record, the security interest has priority over any conflicting
interest of a predecessor in title of the encumbrancer or
owner, and the debtor has an interest of record in the real
estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or
office machines or readily removal to replacements of
domestic appliances which are consumer goods, and before
the goods become fixtures the security interest is perfected
by any method permitted by this chapter; or

(d) the conflicting interest is a lien on the real
estate obtained by legal or equitable proceedings after the

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1 security interest was perfected by any method permitted by
2 this chapter.

3 (5) A security interest in fixtures, whether or not
4 perfected, has priority over the conflicting interest of an
5 encumbrancer or owner of the real estate where:

6 (a) the encumbrancer or owner has consented
7 in writing to the security interest or has disclaimed an interest
8 in the goods as fixtures; or

9 (b) the debtor has a right to remove the goods
10 as against the encumbrancer or owner. If the debtor's right
11 terminates, the priority of the security interest continues for a
12 reasonable time.

13 (6) Notwithstanding paragraph (a) of subsection (4)
14 but otherwise subject to subsections (4) and (5), a security
15 interest in fixtures is subordinate to a construction mortgage
16 recorded before the goods become fixtures if the goods
17 become fixtures before the completion of the construction.
18 To the extent that it is given to refinance a construction
19 mortgage, a mortgage has this priority to the same extent
20 as the construction mortgage.

21 (7) In cases not within the preceding subsections, a
22 security interest in fixtures is subordinate to the conflicting
23 interest of an encumbrance or owner of the related real
24 estate who is not the debtor.

25 (8) When the secured party has priority over all

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owners and encumbrancers of the real estate, he or she may, on default, subject to the provisions of subchapter V, remove his or her collateral from the real estate but the secured party must reimburse any encumbrancer or owner of the real who is not the debtor and who has not otherwise agreed for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation."

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may re pledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by that party's failure to meet any obligation imposed by the preceding subsections but does not lose his or her security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent

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1 provided in the security agreement."

2 Section 18 Chapter 9 of title 33 of the Code of the Federated States of
3 Micronesia is hereby amended by adding a new section 9-208 of subchapter II
4 to read as follows:

5 "Section 9-208. Request for statement of account or list of
6 collateral.

7 (1) A debtor may sign a statement indicating what the
8 debtor believes to be in the aggregate amount of unpaid
9 indebtedness as of a specified date and may sent it to the
10 secured party with a request that the statement be approved or
11 corrected and returned tot he debtor. When the security
12 agreement or any other record kept by the secured party
13 identifies the collateral a debtor may similarly request the secured
14 party to approve or correct a list of the collateral.

15 (2) The secured party must comply with such a request
16 within two weeks after receipt by sending a written correction or
17 approval. If the secured party claims a security interest in all of a
18 particular type of collateral owned by the debtor the secured
19 party may indicate that fact in his or her reply and need not
20 approve or correct an itemized list or such collateral. If the
21 secured party without reasonable excuse fails to comply such
22 party is liable for any loss caused to the debtor thereby; and if
23 the debtor has properly included in the request a good faith
24 statement of the obligation or a list of the collateral or both the
25 secured party may claim a security interest only as shown in he

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statement against persons misled by a failure to comply. IF the
secured party no longer has an interest in the obligation or
collateral at the time the request is received the secured party
must disclose the name and address of any successor in interest
known to him or her and is liable for any loss caused to the
debtor as a result of failure to disclose. A successor in interest is
not subject to this section until a request is received by him or
her.

(3) A debtor is entitled to such a statement once every 6
months without charge. The secured party may require payment
of a charge not exceeding \$10 for each additional statement
furnished."

Section 19. Chapter 9 of title 33 of the Code of the Federated States of
Micronesia is hereby amended by adding a new section 9-301 of subchapter III
to read as follows.

"Section 9-301. Persons who take priority over unperfected
security interest; Rights of 'lien creditor'.

(1) Except as otherwise provided in subsection (2), an
unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under section 9-312;

(b) a person who becomes a lien creditor before
the security interest is perfected;

(c) in the case of goods, instruments, documents,
and chattel paper, a person who is not a secured party and who
is a transferee in bulk or other buyer not in ordinary course of

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business or is a buyer of farm products in ordinary course of business, to the extent that such person gives value and received delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that such person gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A 'lien creditor' means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before becoming alien creditor or within 45 days thereafter, or made without knowledge of the lien or pursuant to a commitment entered into without

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1 knowledge of the lien."

2 Section 20. Chapter 9 of title 33 of the Code of the Federated States of
3 Micronesia is hereby amended by adding a new section 9-302 of subchapter II
4 to read as follows.

5 "Section 9-302. When filing is required to perfect security interest;
6 Security interests to which filing provisions of this chapter do not
7 apply.

8 (1) A financing statement must be filed to perfect all
9 security interests except the following:

10 (a) a security interest in collateral in possession of
11 the secured party under section 9-305;

12 (b) a security interest temporarily perfected in
13 instruments or documents without delivery under section 9-304 or
14 in proceeds for a 10-days period under section 9-306;

15 (c) a security interest created by an assignment of
16 a beneficial interest in a trust or a decedent's estate;

17 (d) a purchase money security interest in consumer
18 goods; but filing is required for a motor vehicle required to be
19 registered; and fixture filing is required for priority over conflicting
20 interest in fixtures to the extent provided in section 9-313;

21 (e) an assignment of accounts which does not alone
22 or in conjunction with other assignments to the same assignee
23 transfer a significant part of the outstanding accounts of the
24 assignor; and

25 (f) an assignment for the benefit of all the creditors

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1 of the transferor, and subsequent transfers by the assignee
2 thereunder.

3 (2) If a secured party assigns a perfected security
4 interest, no filing under this chapter is required in order to
5 continue the perfected status of the security interest against
6 creditors of and transferees from the original debtor."

7 Section 21. Chapter 9 of title 33 of the Code of the Federated States of
8 Micronesia is hereby amended by adding a new section 9-303 of subchapter II
9 to read as follows.

10 "Section 9-303. When security interest is perfected; Continuity of
11 perfection.

12 (1) A security interest is perfected when it has attached
13 and when all of the applicable steps required for perfection have
14 been taken. Such steps are specified in sections 9-302, 9-304,
15 9-305, and 9-306 of this chapter. If such steps are taken before
16 the security interest attaches, it is perfected at the time when it
17 attaches.

18 (2) If a security interest is originally perfected in any way
19 permitted under this chapter and is subsequently perfected in
20 some other way under this chapter, without an intermediate
21 period when it was unperfected, the security interest shall be
22 deemed to be perfected continuously for the purposes of this
23 chapter."

24 Section 22. Chapter 9 of title 33 of the Code of the Federated States of
25 Micronesia is hereby amended by adding a new section 9-304 of subchapter III

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1 to read as follows:

2 "Section 9-304. Perfection of security interest in interments,
3 documents, and goods covered by documents, Perfection by
4 permissive filing; Temporary perfection without filing or transfer of
5 possession.

6 (1) A security interest in chattel paper or negotiable
7 document may be perfected by filing. A security interest in money
8 or instruments (other than certificate securities or instruments
9 which constitute part of chattel paper) can be perfected only by
10 the secured party's taking possession, except as provided in
11 subsections (4) and (5) of this section and subsections (2) and
12 (3) of section 9-306 on proceeds.

13 (2) During the period that goods are in the possession of
14 the issuer of a negotiable document therefore, a security interest
15 in the goods is perfected by perfecting a security interest in the
16 document, and any security interest in the goods otherwise
17 perfected during such period is subject thereto.

18 (3) A security interest in goods in the possession of the
19 bailee other than one who has insured a negotiable document
20 therefor is perfected by issuance of document in the name of the
21 secured party or by the bailee's receipt of notification of the
22 secured party's interest or by filing as to the goods.

23 (4) A security interest in instruments (other than
24 certificate securities) or negotiable documents is perfected
25 without filing of the taking of possession for a period of 21 days

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1 from the time it attaches to the extent that it arises for new
2 value given under a written security agreement.

3 (5) A security interest remains perfected for a period of
4 21 days without filing where a secured party having perfected
5 security interest in an instrument (other than a certificate
6 security), a negotiable document or goods in possession of bailee
7 other than one who has issued a negotiable document therefore:

8 (a) makes available to the debtor the goods or
9 document representing the goods for the purpose of ultimate sale
10 or exchange or for the purpose of loading, unloading, storing,
11 shipping, transshipping, manufacturing, processing or otherwise
12 dealing with them in a manner preliminary to their sale or
13 exchange, but priority between conflicting security interests in the
14 goods is subject to subsection (3) of section 9-312; or

15 (b) delivers the instrument to the debtor for the
16 purpose of ultimate sale or exchange or of presentation,
17 collection, renewal or registration of transfer.

18 (6) After the 21-day period in subsections (4) and (5)
19 perfection depends upon compliance with applicable provisions of
20 this chapter."

21 Section 23. Chapter 9 of title 33 of the Code of the Federated States of
22 Micronesia is hereby amended by adding a new section 9-305 of subchapter II
23 to read as follows:

24 "Section 9-305. When possession by secured party perfects
25 security interest without filing. A security interest in letters of

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credit and advice's of credit, goods, instruments (other than certificate securities), money, negotiable documents, or chattel paper may be prefaced by the secured party' taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possessions from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party."

Section 24. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-306 of subchapter II to read as follows:

"Section 9-306. 'Proceeds'; Secured party's rights on disposition of collateral.

(1) 'Proceeds' includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent tat it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are 'cash proceeds.'" All other proceeds are 'non-cash proceeds.'

(2) Except where this chapter otherwise provides, a

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security interest continues in collateral notwithstanding sale,
exchange or other disposition thereof unless the disposition was
authorized by the security agreement or otherwise, and also
continues in any identifiable proceeds including collections received
by the debtor.

(3) The security interest in proceeds is a continuously
perfected security interest if the interest in the original collateral
was perfected but it cease to be a perfected security interest
and becomes unperfected 10 days after receipt of the proceeds
by the debtor unless:

(a) a filed financing statement covers the original
collateral and the proceeds are collateral in which a security
interest may be perfected by filing in office or offices where the
financing statement has been filed and, if the proceeds are
acquired with cash proceeds, the description of collateral in the
financing statement indicates the types of property constituting
the proceeds; or

(b) a filed financing statement covers the original
collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected
before the expiration of the 10-day period. Except as provided in
this section, a security interest in proceeds can be proceed only
by the methods or under the circumstances permitted in this
chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or

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against a debtor, a serviced party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of check and the like which are not deposited in deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but he perfected security interest under this paragraph (d) is:

(i) subject to any right to setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

a) the payments to the secured party on account of cash proceeds received by the debtor during such period and

b) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

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(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the good are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods are collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods are sold. IF the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of

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1 the returned or repossessed goods."

2 Section 25. Chapter 9 of title 33 of the Code of the Federated States of
3 Micronesia is hereby amended by adding a new section 9-307 of subchapter III
4 to read as follows

5 "Section 9-307. Protection of buyers of goods.

6 (1) A buyer in the ordinary course of business other than
7 person buying farm products from a person engaged in farming
8 operations takes free of a security interest created by the seller
9 even though the security interest is perfected and even though the
10 buyer knows of its existence.

11 (2) In the case of consumer goods, a buyer takes free of
12 a security interest even though perfected if he or she buys without
13 knowledge of the security interest, for value and for the buyers
14 own personal, family or household purposes unless prior to the
15 purchase the secured party has filed a financing statement
16 covering such goods.

17 (3) A buyer other than a buyer in ordinary course of
18 business (subsection (1) of this section) takes free of a security
19 interest to the extent that it secures future advance made after
20 the secured party acquires knowledge of the purchase, or more
21 than 45 days after the purchase, whichever first occurs, unless
22 made pursuant to a commitment entered into without knowledge
23 of the purchase and before the expiration of the 45-day period."

24 Section 26. Chapter 9 of title 33 of the Code of the Federated States of
25 Micronesia is hereby amended by adding a new section 9-308 of subchapter III

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1 to read as follows:

2 "Section 9-308. Purchase of chattel paper and instruments. A
3 purchase of chattel paper or an instrument who gives new value
4 and takes possession of it in the ordinary course of business has
5 priority over a security interest in the chattel paper or instrument:

6 (a) which is perfected under section 9-304
7 (permissive filing and temporary perfection) or under section
8 9-306 (perfection as to proceeds) if the purchaser acts without
9 knowledge that the specific paper or instrument is subject to a
10 security interest; or

11 (b) which is claimed merely as proceeds of inventory
12 subject to a security interest (section 9-306) even though he
13 purchaser knows that the specific paper or instrument is subject
14 to the security interest."

15 Section 27. Chapter 9 of title 33 of the Code of the Federated States of
16 Micronesia is hereby amended by adding a new section 9-309 of subchapter III
17 to read as follows:

18 "Section 9-309. Protection of purchasers of instruments,
19 documents, and securities. Nothing in this chapter limits the rights
20 of a holder in due course of a negotiable instrument or a holder to
21 whom a negotiable document of title has been duly negotiated or
22 a bona fide purchaser of a security and the holders or purchasers
23 take priority over an earlier security interest even though
24 perfected. Filing under this chapter does not constitute notice of
25 the security interest to such holders or purchasers."

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Section 28. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-310 of subchapter III to read as follows:

"Section 9-310. Priority of certain liens arising by operation of law. When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise."

Section 29. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-311 of subchapter III to read as follows:

"Section 9-311. alien ability of debtor's rights, Judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default."

Section 30. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-312 of subchapter III to read as follows:

"Section 9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this

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subchapter and in section 9-109 shall govern when applicable.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planing or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 5 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in wiring to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the fling made by the purchase money secured party, or:

(ii) before the beginning of the 21-day period where the purchase money security interest is temporally perfected without filing or possession (subsection (5) of section

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1 9-304); and

2 (c) the holder of the conflicting security interest
3 receives the notification within 5 years before the debtor receives
4 possession of the inventory; and

5 (d) the notification states that the person giving the
6 notice has or expects to acquire a purchase money security
7 interest in inventory of the debtor, describing such inventory by
8 items or type.

9 (4) A purchase money security interest in collateral other
10 than inventory has priority over a conflicting security interest in
11 the same collateral or its proceeds if the purchase money surety
12 interest is perfected at the time the debtor receives possession of
13 the collateral or within 10 days thereafter.

14 (5) In all cases not governed by other rules stated in this
15 section (including cases of purchase money security interests
16 which do not qualify for the special priorities set forth in
17 subsections (3) and (4) of this section), priority between
18 conflicting security interests in the same collateral shall be
19 determined according to the following rules:

20 (a) Conflict security interests rank according to
21 priority in time of filing or perfection. Priority dates from the time
22 a filing is first made covering the collateral or the time the security
23 interest is first perfected, whichever is earlier, provided that there
24 is no period thereafter when there is neither filing nor perfection.

25 (b) So long as conflicting security interests are

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1 unperfected, the first to attach has priority.

2 (6) For the purpose of subsection (5) a date of filing or
3 perfection as to collateral is also a date of filing or perfection as
4 to proceeds.

5 (7) If future advances are made while a security interest is
6 perfected by filing or the taking of possession, the security
7 interest has the same priority for the purposes of subsection (5)
8 with respect to the future advances as it does with respect to
9 the first advance. If a commitment is made before or while he
10 security interest is so perfected, the security interest has the
11 same priority with respect to advance made pursuant thereto. In
12 other cases a perfected security interest has priority from the
13 date the advance is made."

14 Section 31. Chapter 9 of title 33 of the Code of the Federated States of
15 Micronesia is hereby amended by adding a new section 9-313 of subchapter III
16 to read as follows:

17 "Section 9-313. Priority of security interests in fixtures.

18 (1) In this section and in the provisions of subchapter IV
19 of this chapter referring to fixture filing, unless the context
20 otherwise requires:

21 (a) goods are 'fixtures' when they become so
22 related to particular real estate that an interest in them arises
23 under real estate law;

24 (b) a 'fixture filing' is the filing in the office where a
25 mortgage on the real estate would be filed or recorded of a

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financing statement covering goods which are or are to become
fixtures and conforming to the requirements of subsection (5) of
section 9-304;

(c) a mortgage is a 'construction mortgage' to the
extent that it secures an obligation incurred for the construction
of an improvement on land including the acquisition cost of the
land, if the recorded writing so indicates.

(2) A security interest under this chapter may be created
in goods which are fixtures or may continue in goods which
become fixtures, but no security interest exists under this chapter
in ordinary building materials

Section 32. Chapter 9 of title 33 of the Code of the Federated
States of Micronesia is hereby amended by adding a new section 9-314 of
subchapter III to read as follows:

"Section 9-314. Accessions.

(1) A security interest in goods which attaches before
they are installed in or affixed to other goods takes priority
as to the goods installed or affixed (called in this section
'accessions') over the claims of all persons to the whole
except as stated in subsection (3) and subject to section 9-
315(1).

(2) A security interest which attaches to goods after
they become part of a whole is valid against all persons
subsequently acquiring interests in the whole except as stated in

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subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances; if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at the holder's own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, such party may on default subject to the provisions of subchapter V remove his or her collateral from the whole but the secured party must reimburse any encumbrance or owner of the whole who is not the debtor and who has not otherwise agreed for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person

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entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation."

Section 33. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-315 of subchapter III to read as follows:

"Section 9-315. Priority when goods are commingled or processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original good also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass."

Section 34. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-316 of subchapter III to

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1 read as follows:

2 "Section 9-316. Priority subject to subordination. Nothing in this
3 chapter prevents subordination by agreement by any person entitled to
4 priority.'

5 Section 35. Chapter 9 of title 33 of the Code of the Federated States of
6 Micronesia is hereby amended by adding a new section 9-317 of subchapter III to
7 read as follows:

8 "Section 9-317. Secured party not obligated on contract of debtor.
9 The mere existence of a security interest or authority given to the
10 debtor to dispose of or use collateral does not impose contract or tort
11 liability upon the secured party for the debtor's acts or omissions."

12 Section 36. Chapter 9 of title 33 of the Code of the Federated States of
13 Micronesia is hereby amended by adding a new section 9-318 of subchapter III to
14 read as follows:

15 "Section 9-318. Defenses against assignee; Modification of contract
16 after notification of assignment; Term prohibiting assignment ineffective;
17 Identification and proof of assignment.

18 (1) Unless an account debtor has made an enforceable
19 agreement not to assert defenses or claims arising out of a sale as
20 provided in section 9-206 the rights of an assignee are subject to:

21 (b) Any other defense or claim of the account debtor
22 against the assignor which accrues before the account debtor receiver
23 notification of the assignment.

24 (2) So far as the right to payment or a part thereof under an
25 assigned contract has not been fully earned by performance, and

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1 notwithstanding notification of the assignment, any modification of or
2 substitution for the contract made in good faith in accordance with
3 reasonable commercial standards is effective against an assignee unless
4 the account debtor has otherwise agreed but the assignee acquires
5 corresponding rights under the modified or substituted contract. The
6 assignment may provide that such modification or substitution is a
7 breach by the assignor.

8 (3) The account debtor is authorized to pay the assignor until
9 the account debtor receives notification that the amount due or to
10 become due has been assigned and that payment is to be made to the
11 assignee. A notification which does not reasonably identify the rights
12 assigned is ineffective. If requested by the account debtor, the assignee
13 must seasonably furnish reasonable proof that the assignment been
14 made and unless the assignee does so the account debtor may pay the
15 assignor.

16 (4) A term in any contract between an account debtor and an
17 assignor is ineffective if it prohibits creation of a security interest in a
18 general intangible for money due or to become due or requires the
19 account debtor's consent to such assignment or security interest."

20 Section 37. Chapter 9 of title 33 of the Code of the Federated States of
21 Micronesia is hereby amended by adding a new section 9-401 of subchapter IV to
22 read as follows:

23 "Section 9-401. Place of filing; Erroneous filing; Removal of collateral.

24 (1) The proper place to file in order to perfect a security interest
25 is as follows:

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(1) In the office of the Registrar of Corporations in the Department of Resources and Development or other place as the Secretary of Resources and Development may designate.

(2) A filing which is made in the proper place continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original, is thereafter changed.

(3) Notwithstanding the preceding subsections, and subject to subsections, and subject to subsection (3) of section 9-302, the proper place to file in order perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Registrar of Corporations in the Department of Resources and Development. This filing constitutes a fixture filing (section 9-313) as to the collateral described therein which is or is to become fixtures."

Section 38. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-402 of subchapter IV to read as follows:

"Section 9-402. Formal requisites of financing statement; Amendments; Mortgage as financing statement.

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security

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agreement is made or a security interest otherwise attaches. When the
financing statement covers crops growing or to be grown, the
statement must also contain a description of the real-estate concerned.
When the financing statement is filed as a fixture filing (section 9-313)
and the collateral is goods which are or are to become fixtures, the
statement must also comply with subsection (5). A copy of the security
agreement is sufficient as a financing statement if it contains the above
information and is signed by the debtor. A carbon, photographic or
other reproduction of a security agreement or a financing statement is
sufficient as a financing statement if the security agreement so provides
or if the original has been filed in the Federated States of Micronesia.

(2) A financing statement which otherwise complies with
subsection (1) is sufficient when it is signed by the secured party instead
of the debtor if its filed to perfect a security interest in:

(a) collateral already subject to a security interest in
another jurisdiction when it is brought into the Federated States of
Micronesia, or when the debtor's location is changed to the Federated
States of Micronesia. Such a financing statement must state that the
collateral was brought into the Federated States of Micronesia or that
the debtor's location was changed to the Federated States of
Micronesia under such circumstances; or

(b) proceeds under section 9-306 if the security interest in
the original collateral was perfected. Such a financing statement must
describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

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(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor).....

Address:.....

Name of secured party (or assignee):.....

Address:.....

1. This financing statement covers the following types (or items) of property: (Describe).....

2. (If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate).....

3. (If applicable) The above goods are to become fixtures on: (Describe Real Estate)and this financing statement is to be filed in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is:.....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(use.....

whichever Signature of Debtor (or Assignor)

(is applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any

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1 amendment adds collateral, it is effective as to the added collateral only
2 from the filing date of the amendment. In this chapter, unless the
3 context otherwise requires, the term 'financing statement' means the
4 original financing statement and any amendments.

5 (5) A financing statement covering timber to be cut or covering
6 minerals or the like (including oil and gas.) or a financing statement filed
7 as a fixtures filing (section 9-313) where the debtor is not a transmitting
8 utility, must show that it covers this type of collateral, must recite that
9 it is to be filed in the real estate records, and the financing statement
10 must contained in a mortgage of the real estate to give constructive
11 notice of the mortgage under the laws of the State in which the real
12 estate is located. If the debtor does not have an interest of record in
13 the real estate, the financing statement must shoe the name of a record
14 owner.

15 (6) A mortgage is effective as a financing statement filed as a
16 fixture filing from the date of its recording if:

17 (a) the goods are described in the mortgage by item or
18 type; and

19 (b) the goods are or are to become fixtures related to
20 the real estate described in the mortgage; and

21 (c) the mortgage complies with the requirements for a
22 financing statement in this section other than a recital that it is to be
23 filed in the real estate records; and

24 (d) the mortgage is duly recorded.

25 (7) A financing statement sufficiently shows the same of the

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debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his or her name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the changes, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Section 39. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-403 of subchapter IV to read as follows:

"Section 9-403. What constitutes filing; Duration of filing; Effect of lapsed filing; Duties of filing officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration

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of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who become a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 945, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if

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1 the filing officer has retained a microfilm or other photographic record,
2 or in other cases after 1 year after the lapse. The filing officer shall so
3 arrange matters by physical annexation of financing statements to
4 continuation statements or other related filings, or by other means, that
5 if the officer physically destroys the financing statements of a period
6 more than 5 years past, those which have been continued by a
7 continuation statement or which are still effective under subsection (6)
8 shall be retained.

9 (4) Except as provided in subsection (7) a filing officer shall mark
10 each statement with a file number and with the date and hour of filing
11 and shall hold the statement or a microfilm or other photographic copy
12 thereof for public inspection. In addition the filing officer shall index the
13 statement according to the name of the debtor and shall note in the
14 index the file number and the address of the debtor given in the
15 statement.

16 (5) The uniform fee for filing and indexing and for stamping a
17 copy furnished by the secured party to show the date and place of filing
18 for an original financing statement or for a continuation statement shall
19 be \$25. plus in each case, if the financing statement is subject to
20 subsection (5) of section 9-402, \$50. The uniform fee for each name
21 more than one required to be indexed shall be \$10. The secured party
22 may at his or her option show a trade name for any person and an
23 extra uniform indexing fee of \$10 shall be paid with respect thereto.

24 (6) If the debtor is a transmitting utility (subsection (5) of
25 section 9-401) and a filed financing statement so states, it is effective

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1 until a termination statement is filed. A real estate mortgage which is
2 effective as a fixture filing under subsection (6) of section 9-402 remains
3 effective as a fixture filing until the mortgage is released or satisfied of
4 record or its effectiveness otherwise terminates as to the real estate.

5 (7) When a financing statement covers timber to be cut or
6 covers minerals or the like (including oil and gas), or is filed as a fixture
7 filing, it shall be filed for record and the filing officer shall index it under
8 the name of the debtor and any owner of record shown on the financing
9 statement in the same fashion as if they were the mortgagors in a
10 mortgage of the real estate described, and, to the extent that the law
11 of the State in which the real estate is located provides for indexing of
12 mortgages under the name of the mortgagee, under the name of the
13 secured party as if such party were the mortgages thereunder, or
14 where indexing is by description in the same fashion as if the financing
15 statement were a mortgage of the real estate described."

16 Section 40. Chapter 9 of title 33 of the Code of the Federated States of
17 Micronesia is hereby amended by adding a new section 9-404 of subchapter IV to
18 read as follows:

19 "Section 9-404. Termination statement.

20 (1) If a financing statement covering consumer goods is filed on
21 or after the effective date of this chapter, then within 1 month or within
22 10 days following written demand by the debtor after there is no
23 outstanding secured obligation and no commitment to make advance,
24 incur obligations or otherwise give value, the secured party must
25 statement was filed, a termination statement to the effect that the

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secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the secured statement, which shall by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of section 9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within 10 days after proper demand therefore, the secured party shall be liable to the debtor for \$100, and in addition, for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement the filing officer must note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if there is

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no such record, the filing officer may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The termination statement shall be in the standard form prescribed by the Secretary of Resources and Development, the fee for filing and indexing the termination statement shall be \$25, plus in each case an additional fee of \$10 for each name more than one against which the termination statement is required to be indexed."

Section 41. Chapter 9 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-405 of subchapter IV to read as follows:

"Section 9-405. Assignment of security interest; Duties of filing officer; Fees.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$10 plus in each case an additional fee of \$10 for each name more than one against which the financing statement is required to be indexed.

(2) A secured party may assign of record all or part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the

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name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer mark such separate statement with the date and hour of the filing. The filing officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas), the filing officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of the State in which the related real estate is located provides for indexing the assignment of a mortgage under the name of the assignee, the filing officer shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing data about such a separate statement of assignment shall be \$10 plus in each case an additional fee of \$10 for each name more than one against which the statement of assignment is required to be indexed. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State in which the related real estate is located other than as provided in this act.

(3) After the disclosure or filing of an assignment under this

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1 section, the assignee is the secured party of record."

2 Section 42. Chapter 9 of the Code of the Federated States of Micronesia is
3 hereby amended by adding a new section 9-406 of subchapter IV to read as follows:

4 "Section 9-406. Release of collateral; Duties of filing officer; Fees. A
5 secured party of record may be signed statement release all or a part
6 of any collateral described in a filed financing statement. The statement
7 of release is sufficient if it contains a description of the debtor, the name
8 and address of the secured party, and the file number of the financing
9 statement. A statement of release signed by a person other than the
10 secured party of record must be accompanied by a separate written
11 statement of assignment signed by the secured party of record and
12 complying with subsection (2) of section 9-405, including complying
13 payment of the required fee. Upon presentation of such a statement of
14 release to the filing officer the filing officer shall mark the statement with
15 the hour and date of filing and shall note the same upon the margin of
16 the index of the filing of the financing statement. The uniform fee for
17 filing and noting such a statement of release shall be \$10 plus in each
18 case an additional fee of \$10 for each name more than one against
19 which the statement of release is required to be indexed."

20 Section 43. Chapter 9 of title 33 of the Code of the Federated States of
21 Micronesia is hereby amended by adding a new section 9-408 of subchapter IV to
22 read as follows:

23 "Section 9-408. Financing statements covering consigned or leased
24 goods. A consider or lessor of goods may file a financing statement
25 using the terms 'consignor,' 'consignee,' 'lessor,' 'lessee' or the like

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1 instead of the terms specified in section 9-402. The provisions of this
2 subchapter shall apply as appropriate to such a financing statement but
3 its filing shall not of itself be a factor in determining whether or not the
4 consignment or lease is intended as security. However, if it is determined
5 for other reasons that the consignment or lease is so intended, a
6 security interest of the consignor or lessor which attaches to the
7 consigned or leased goods is perfected by such filing."

8 Section 44. Chapter 9 of title 33 of the Code of the Federated States of
9 Micronesia is hereby amended by adding a new section 9-501 of subchapter V to
10 read as follows:

11 "Section 9-501. Default; Procedure when security agreement covers
12 both real and personal property.

13 (1) When a debtor is in default under a security agreement, a
14 secured party has the rights and remedies provided in this subchapter
15 and except as limited by subsection (3) those provided in the security
16 agreement. The debtor may reduce his or her claim to judgment,
17 foreclose or otherwise enforce the security interest by any available
18 judicial procedure. If the collateral is documents the secured party may
19 proceed either as to the documents or as to the goods covered
20 thereby. A secured party in possession has the rights, remedies
21 referred to in this subsection are cumulative.

22 (2) After default, the debtor has the rights and remedies
23 provided in this subchapter, those provided in the security agreement
24 and those provided in section 9-207.

25 (3) To the extent that they give rights to the debtor and impose

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duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of section 9-504 and section 9-505) and with respect to redemption of collateral (section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 9-502 and subsection (2) of section 9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 9-504 and subsection (1) section 955 which deal with disposition of collateral;

(c) subsection (2) of section 9-505 which deals with acceptance of collateral as discharge of obligation;

(d) section 9-506 which deals with redemption of collateral; and

(e) subsection (1) of section 9-507 which deals with the secured party's liability for failure to comply with this subchapter.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this subchapter as to the personal property or the secured party may proceed as to both the real and the real and the personal property in accordance with his or her rights and remedies in respect of the real property in which case the provisions of this subchapter do not apply.

(5) When a secured party has reduced his or her claim to

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judgment the lien of any levy which may be made upon the secured party's collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter."

Section 45. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-502 of subchapter V to read as follows:

"Section 9-502. Collection rights of secured party.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was therefore making collections on the collateral, and also to take control of any proceeds to which the secured party is entitled under section 9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the

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debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus is liable for any deficiency only if the security agreement so provides."

Section 46. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-503 of subchapter V to read as follows:

"Section 9-503. Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9-504."

Section 47. Chapter 9 of title 33 of the Code of the Federated States of Micronesia is hereby amended by adding a new section 9-504 of subchapter V to read as follows:

"Section 9-504. Secured party's right to dispose of collateral after default; Effect of disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of

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disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party:

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made:

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefore is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of the holder's interest, and unless the holder does so, the secured party need not comply with the holder's demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially

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reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying his or her right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his or her notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this subchapter or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

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1 (b) in any other case, if the purchaser acts in good faith.
2 (5) A person who is liable to a secured party under a guaranty,
3 endorsement, repurchase agreement or the like and who receives a
4 transfer of collateral from the secured party or is surrogated to his or
5 her rights has thereafter the rights and duties of the secured party.
6 Such a transfer of collateral is not a sale or disposition of the collateral
7 under this chapter."

8 Section 48. Chapter 9 of title 33 of the Code of the Federated States of
9 Micronesia is hereby amended by adding a new section 9-505 of subchapter V to
10 read as follows:

11 "Section 9-505. Compulsory disposition of collateral; Acceptance of the
12 collateral as discharge of obligation.

13 (1) If the debtor has paid 60 percent of the cash price in the
14 case of a purchase money security interest in consumer goods or 60
15 percent of the loan in the case of another security interest in consumer
16 goods, and has not signed after default a statement renouncing or
17 modifying his or her rights under this subchapter a secured party who
18 has taken possession of collateral must dispose of it under section
19 9-504 and if such party fails to do so within 90 days after taking
20 possession the debtor, at the debtor's option, may recover in
21 conversion or under section 9-507(1) on secured party's liability.

22 (2) In any other case involving consumer goods or any other
23 collateral a secured party in possession may, after default, propose to
24 retain the collateral in satisfaction of the obligation. Written notice of
25 such proposal shall be sent to debtor if debtor has not signed, after

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1 default, a statement renouncing or modifying his or her rights under this
2 subsection. In the case of consumer goods no other notice need be
3 given. In other cases notice shall be sent to any other secured party
4 from whom the secured party has received (before sending notice to the
5 debtor or before the debtor's renunciation of rights) written notice of a
6 claim of an interest in the collateral. If the secured party receives
7 objection in writing from a person entitled to receive notification within
8 21 days after the notice was sent, the secured party must dispose of
9 the collateral under section 9-504. In the absence of such written
10 objection the secured party may retain the collateral in satisfaction of
11 the debtor's obligation."

12 Section 49. Chapter 9 of title 33 of the Code of the Federated States of
13 Micronesia is hereby amended by adding a new section 9-506 of subchapter V to
14 read as follows:

15 "Section 9-506. Debtor's right to redeem collateral. At any time before
16 the secured party has disposed of collateral or entered into a contract
17 for its disposition under section 9-504 or before the obligation has been
18 discharged under section 9-505(2) the debtor or any other secured
19 party may unless otherwise agreed in writing after default redeem the
20 collateral by tendering fulfillment of all obligations secured by the
21 collateral as well as the expenses reasonably incurred by the secured
22 party in retaking, holding and preparing the collateral for disposition, in
23 arranging for the sale, and to the extent provided in the agreement and
24 not prohibited by law, reasonable attorneys' fees and legal expenses."

25 Section 50. Chapter 9 of title 33 of the Code of the Federated States of

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Micronesia is hereby amended by adding a new section 9-507 of subchapter V to read as follows:

"Section 9-507. Secured party's liability for failure to comply with this subchapter.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this subchapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this subchapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefore or if the secured party sells at the price current in such market at the time of sale or if he or she has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he or she sold in a commercially reasonable manner. The principles stated in this subsection with respect to sales also apply as may be

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1 appropriate to other types of disposition. A disposition which has been
2 approved in any judicial proceeding or by any bona fide creditors'
3 committee or representative of creditors shall conclusively be deemed to
4 be commercially reasonable, but this sentence does not indicate that any
5 such approval must be obtained in any case nor does it indicate that
6 any disposition not so approved is not commercially reasonable."

7 Section 51. This act shall become law 90 days after approval by the President
8 of the Federated States of Micronesia or upon its becoming law without such
9 approval.

Date:

11/10/97

Introduced by:

Redley Killian